

HOUSE BILL 2

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2004 Regular Session
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(PRE-FILED)

By: **The Speaker and Delegates D. Davis, Doory, Lee, Barkley, Benson, Bobo, Bromwell, Bronrott, Busch, Cadden, Cane, Cardin, G. Clagett, V. Clagett, Conroy, Conway, Cryor, DeBoy, Dumais, Feldman, Franchot, Griffith, Harrison, Healey, Hixson, Howard, Hurson, James, Jones, Kaiser, Kelley, King, Kirk, Krysiak, Love, Madaleno, Malone, Mandel, Marriott, McHale, McIntosh, Menes, Minnick, Moe, Montgomery, Pendergrass, Proctor, Quinter, Ramirez, Rosenberg, Smigiel, Sophocleus, Sossi, Taylor, V. Turner, Vallario, and Vaughn Vaughn, and Hammen**

Requested: November 17, 2003
Introduced and read first time: January 14, 2004
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 25, 2004

CHAPTER _____

1 AN ACT concerning

2 **Commercial Law - Maryland Do Not Call Registry Telephone Consumer**
3 **Protection Act**

4 FOR the purpose of ~~providing for the enforcement of a certain federal "do not call"~~
5 ~~registry under State law; providing that a violation of certain federal laws is a~~
6 ~~violation of this Act; requiring the Public Service Commission, in consultation~~
7 ~~with the Office of the Attorney General, to examine periodically whether a~~
8 ~~certain federal program exists and is in effect; requiring the Commission, under~~
9 ~~certain circumstances, to create, maintain, and update a database of residential~~
10 ~~telephone subscribers in the State who choose not to receive telephone~~
11 ~~solicitations; authorizing the Commission to contract with another entity to~~
12 ~~create and operate the database; requiring the database to be in operation~~
13 ~~within a certain period; requiring the Commission to adopt certain regulations;~~
14 ~~under certain circumstances, relating to notice of the database, fees to be~~
15 ~~charged for use of the database, access to the database, inclusion in the~~
16 ~~database, and other matters; requiring a person who intends to engage in~~
17 ~~telephone solicitation to purchase the updated version of the database for each~~
18 ~~client; prohibiting a person who engages in telephone solicitation from soliciting~~
19 ~~or causing a solicitation to a listed residential telephone subscriber; requiring~~

1 the Commission to make the database available to persons engaged in telephone
 2 solicitation at a certain time; limiting the use of the information contained in the
 3 database; ~~authorizing certain legal action against a person engaged in telephone~~
 4 ~~solicitation for a violation of this Act and authorizing the recovery of certain~~
 5 ~~damages and fees; providing a limitation on legal action; providing for a certain~~
 6 ~~affirmative defense against a legal action; providing that a violation of this Act~~
 7 ~~is an unfair and deceptive trade practice and may be a violation of the State~~
 8 ~~Credit Services Businesses Act under certain circumstances; establishing~~
 9 ~~certain penalties for certain violations of this Act; providing for the application~~
 10 ~~of this Act; providing for certain exceptions to this Act prohibiting a person from~~
 11 violating the federal Telemarketing and Consumer Fraud and Abuse Prevention
 12 Act or the federal Telephone Consumer Protection Act; providing that a violation
 13 of this Act is an unfair or deceptive trade practice and is subject to certain
 14 enforcement actions and penalties; authorizing an individual who is affected by
 15 a violation of this Act to bring an action against a violator to recover reasonable
 16 attorney's fees and damages in a certain amount; providing that each prohibited
 17 telephone solicitation and each prohibited practice during a telephone
 18 solicitation is a separate violation of this Act; providing that this Act does not
 19 apply to certain telephone calls initiated for a charitable organization by certain
 20 persons; defining certain terms and redefining a certain term; requiring that the
 21 Commission and the Office of the Attorney General report on certain matters to
 22 certain committees of the General Assembly by a certain date; and generally
 23 relating to telephone solicitations in the State telephones and consumer
 24 protection.

25 BY repealing and reenacting, with amendments,
 26 Article - Commercial Law
 27 Section ~~14-2201, 14-2202, and 14-2205~~ 13-301(14)
 28 Annotated Code of Maryland
 29 (2000 Replacement Volume and 2003 Supplement)

30 ~~BY repealing and reenacting, without amendments,~~
 31 ~~Article - Commercial Law~~
 32 ~~Section 14-2203 and 14-2204~~
 33 ~~Annotated Code of Maryland~~
 34 ~~(2000 Replacement Volume and 2003 Supplement)~~

35 BY adding to
 36 Article - Commercial Law
 37 Section ~~14-2205~~ 14-3201 through 14-3203, inclusive, to be under the new
 38 subtitle "Subtitle 32. Maryland Telephone Consumer Protection Act"
 39 Annotated Code of Maryland
 40 (2000 Replacement Volume and 2003 Supplement)

41 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 42 MARYLAND, That the Laws of Maryland read as follows:

1

Article - Commercial Law2 ~~14-2201.~~3 (a) ~~In this subtitle the following words have the meanings indicated.~~4 13-301.5 Unfair or deceptive trade practices include any:6 (14) Violation of a provision of:7 (i) This title;8 (ii) An order of the Attorney General or agreement of a party
9 relating to unit pricing under Title 14, Subtitle 1 of this article;10 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt
11 Collection Act;12 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door
13 Sales Act;14 (v) Title 14, Subtitle 9 of this article, Kosher Products;15 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;16 (vii) Section 14-1302 of this article;17 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales
18 Act;19 (ix) Section 22-415 of the Transportation Article;20 (x) Title 14, Subtitle 20 of this article;21 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty
22 Enforcement Act;23 (xii) Title 14, Subtitle 21 of this article;24 (xiii) Section 18-107 of the Transportation Article;25 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone
26 Solicitations Act;27 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts
28 Act;29 (xvi) Title 10, Subtitle 6 of the Real Property Article;30 (xvii) Title 10, Subtitle 8 of the Real Property Article;

1 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

2 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door
3 Solicitations Act;

4 (xx) Title 14, Subtitle 31 of this article, the Maryland Household
5 Goods Movers Act; or

6 (XXI) TITLE 14, SUBTITLE 32 OF THIS ARTICLE, THE MARYLAND
7 TELEPHONE CONSUMER PROTECTION ACT; OR

8 SUBTITLE 32. MARYLAND TELEPHONE CONSUMER PROTECTION ACT.

9 14-3201.

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF
13 THE BUSINESS REGULATION ARTICLE.

14 (C) ~~"COMMISSION" MEANS THE PUBLIC SERVICE COMMISSION.~~

15 ~~[(b)] (D) "Consumer" means an actual or prospective purchaser, lessee, or~~
16 ~~recipient of consumer goods, consumer services, or consumer realty.~~

17 ~~[(c)] (E) (1) "Consumer goods", "consumer realty", and "consumer services"~~
18 ~~mean, respectively, goods, real property, and services which are primarily for~~
19 ~~personal, household, family, or agricultural purposes.~~

20 ~~(2) (i) [Subject] IN §§ 14-2203 AND 14-2204 OF THIS SUBTITLE, AND~~
21 ~~SUBJECT to subparagraph (ii) of this paragraph, "consumer services" does not include~~
22 ~~financial services or securities sales.~~

23 ~~(ii) "Consumer services" includes any solicitation offering credit~~
24 ~~services where:~~

25 1. ~~The consumer is required to call a telephone number;~~

26 2. ~~The consumer is charged a separate toll fee for the call;~~
27 ~~and~~

28 3. ~~The person making the solicitation receives any portion of~~
29 ~~the separate telephone toll fee paid by the consumer.~~

30 ~~[(d)] (F) "Credit services" means providing or offering to provide any service~~
31 ~~in return for the payment of money or other consideration, where the service is held~~
32 ~~out to provide assistance to a consumer with regard to:~~

33 (1) ~~Improving the consumer's credit history, credit rating, or credit~~
34 ~~record; or~~

1 (2) ~~Obtaining an extension of credit for the consumer.~~

2 (G) (1) ~~"DATABASE" MEANS A LIST CONSISTING SOLELY OF THE TELEPHONE~~
3 ~~NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT WISH TO~~
4 ~~RECEIVE TELEPHONE SOLICITATIONS.~~

5 (2) ~~"DATABASE" INCLUDES THE FEDERAL "DO NOT CALL" REGISTRY~~
6 ~~UNDER THE JURISDICTION OF THE FEDERAL COMMUNICATIONS COMMISSION AND~~
7 ~~THE FEDERAL TRADE COMMISSION.~~

8 ~~{(e)}~~ (H) (1) ~~"Merchant" means a person who, directly or indirectly, offers or~~
9 ~~makes available to consumers any consumer goods, consumer services, or consumer~~
10 ~~realty.~~

11 (2) ~~"Merchant" does not include a person who is exempt under § 13-104~~
12 ~~of this article.~~

13 (I) (1) ~~"RESIDENTIAL SUBSCRIBER" MEANS:~~

14 (I) ~~AN INDIVIDUAL WHO HAS SUBSCRIBED TO RESIDENTIAL~~
15 ~~TELEPHONE SERVICE FROM A LOCAL EXCHANGE COMPANY;~~

16 (II) ~~ANY INDIVIDUAL WHO RESIDES WITH THE SUBSCRIBER; OR~~

17 (III) ~~AN INDIVIDUAL WHO HAS SUBSCRIBED TO WIRELESS~~
18 ~~TELEPHONE SERVICE WITH A MARYLAND AREA CODE.~~

19 (2) ~~"RESIDENTIAL SUBSCRIBER" DOES NOT INCLUDE A COMMERCIAL~~
20 ~~SUBSCRIBER TO A TELEPHONE SERVICE.~~

21 ~~{(f)}~~ (J) ~~"Telephone solicitation" means [the attempt by a merchant to sell or~~
22 ~~lease consumer goods, services, or realty to a consumer located in this State that is:~~

23 (1) ~~Made entirely by telephone; and~~

24 (2) ~~Initiated by the merchant] ANY VOICE COMMUNICATION OVER A~~
25 ~~TELEPHONE LINE FOR THE PURPOSE OF ENCOURAGING THE PURCHASE OR RENTAL~~
26 ~~OF, OR INVESTMENT IN, PROPERTY, GOODS, OR SERVICES.~~

27 ~~14-2202.~~

28 (a) ~~[The provisions of this] SECTIONS 14-2203 AND 14-2204 OF THIS subtitle do~~
29 ~~not apply to a transaction:~~

30 (1) ~~Made in accordance with prior negotiations in the course of a visit by~~
31 ~~the consumer to a merchant operating a retail business establishment which has a~~
32 ~~fixed permanent location and where consumer goods are displayed or offered for sale~~
33 ~~on a continuing basis;~~

34 (2) ~~In which the person making the solicitation or the business~~
35 ~~enterprise for which the person is calling;~~

- 1 (i) Has made a previous sale to the consumer; or
- 2 (ii) Has a preexisting business relationship with the consumer;
- 3 (3) Which is covered by the provisions of Subtitle 3 of this title;
- 4 (4) In which:
- 5 (i) The consumer may obtain a full refund for the return of
- 6 undamaged and unused goods to the seller within 7 days of receipt by the consumer;
- 7 and
- 8 (ii) The seller will process the refund within 30 days of receipt of
- 9 the returned merchandise by the consumer;
- 10 (5) In which the consumer purchases goods or services pursuant to an
- 11 examination of a television, radio, or print advertisement or a sample, brochure,
- 12 catalogue, or other mailing material of the merchant that contains:
- 13 (i) The name, address, and telephone number of the merchant;
- 14 (ii) A description of the goods or services being sold; and
- 15 (iii) Any limitations or restrictions that apply to the offer; or
- 16 (6) In which the merchant is a [bona fide] charitable organization [as
- 17 defined in § 6-101 of the Business Regulation Article].
- 18 (b) Notwithstanding subsection (a) of this section, this subtitle applies to any
- 19 solicitation offering credit services where:
- 20 (1) The consumer is required to call a telephone number;
- 21 (2) The consumer is charged a separate toll fee for the call; and
- 22 (3) The person making the solicitation receives any portion of the
- 23 separate telephone toll fee paid by the consumer.
- 24 ~~14-2203.~~
- 25 (a) A contract made pursuant to a telephone solicitation is not valid and
- 26 enforceable against a consumer unless made in compliance with this subtitle.
- 27 (b) A contract made pursuant to a telephone solicitation:
- 28 (1) Shall be reduced to writing and signed by the consumer;
- 29 (2) Shall comply with all other applicable laws and regulations;
- 30 (3) Shall match the description of goods or services as that principally
- 31 used in the telephone solicitation;

1 (4) Shall contain the name, address, and telephone number of the seller,
2 the total price of the contract, and a detailed description of the goods or services being
3 sold;

4 (5) Shall contain, in at least 12 point type, immediately preceding the
5 signature, the following statement:

6 "~~You are not obligated to pay any money unless you sign this contract and return~~
7 ~~it to the seller.~~"; and

8 (6) May not exclude from its terms any oral or written representations
9 made by the merchant to the consumer in connection with the transaction.

10 ~~14-2204.~~

11 A merchant engaging in a telephone solicitation may not make or submit any
12 charge to the consumer's credit account until after the merchant receives from the
13 consumer a copy of the contract which complies with this subtitle.

14 ~~14-2205.~~

15 ~~(A) THIS SECTION DOES NOT APPLY TO A TELEPHONE SOLICITATION THAT:~~

16 ~~(1) IS MADE BY A PERSON TO A RESIDENTIAL SUBSCRIBER IF:~~

17 ~~(I) THE PERSON IS RESPONDING TO AN EXPRESS, VERIFIABLE~~
18 ~~REQUEST OR INQUIRY BY THE RESIDENTIAL SUBSCRIBER; OR~~

19 ~~(II) THE RESIDENTIAL SUBSCRIBER GAVE PRIOR EXPRESS,~~
20 ~~VERIFIABLE PERMISSION FOR THE PERSON TO MAKE THE TELEPHONE~~
21 ~~SOLICITATION;~~

22 ~~(2) IS MADE BY OR ON BEHALF OF A CHARITABLE ORGANIZATION;~~

23 ~~(3) IS LIMITED TO SOLICITING THE EXPRESSION OF IDEAS, OPINIONS,~~
24 ~~OR VOTES;~~

25 ~~(4) IS MADE TO A BUSINESS; OR~~

26 ~~(5) UNLESS THE COMMISSION FINDS THAT THE FEDERAL "DO NOT~~
27 ~~CALL" REGISTRY IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION,~~
28 ~~OTHERWISE COMPLIES WITH FEDERAL LAW AND REGULATIONS CONCERNING~~
29 ~~TELEMARKETING SALES AND THE REGISTRY.~~

30 ~~(B) (1) (I) IN CONSULTATION WITH THE OFFICE OF THE ATTORNEY~~
31 ~~GENERAL, THE COMMISSION PERIODICALLY SHALL EXAMINE WHETHER A FEDERAL~~
32 ~~PROGRAM, INCLUDING A "DO NOT CALL" REGISTRY OR SIMILAR DATABASE, EXISTS~~
33 ~~AND IS IN EFFECT TO PROVIDE PROTECTION FOR MARYLAND RESIDENTIAL~~
34 ~~SUBSCRIBERS AGAINST UNWANTED TELEPHONE SOLICITATION.~~

1 (HI) IF THE COMMISSION FINDS THAT THE FEDERAL PROGRAM,
2 INCLUDING A "DO NOT CALL" REGISTRY OR SIMILAR DATABASE, DOES NOT EXIST OR
3 IS NOT IN EFFECT, THE COMMISSION SHALL:

4 1. NOTIFY THE GOVERNOR, THE OFFICE OF THE ATTORNEY
5 GENERAL, AND, SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE
6 GENERAL ASSEMBLY OF THAT FACT; AND

7 2. ESTABLISH A STATE DATABASE UNDER PARAGRAPH (2) OF
8 THIS SUBSECTION.

9 (2) (H) THIS PARAGRAPH APPLIES ONLY IF THE COMMISSION HAS
10 FOUND THAT THE FEDERAL "DO NOT CALL" REGISTRY IS NOT IN EFFECT UNDER
11 PARAGRAPH (1)(II) OF THIS SUBSECTION.

12 1. THE COMMISSION SHALL ESTABLISH AND PROVIDE FOR
13 THE CREATION AND OPERATION OF A DATABASE THAT CONSISTS SOLELY OF
14 TELEPHONE NUMBERS OF MARYLAND RESIDENTIAL SUBSCRIBERS WHO DO NOT
15 WISH TO RECEIVE TELEPHONE SOLICITATIONS.

16 2. THE COMMISSION SHALL UPDATE THE DATABASE EVERY
17 3 MONTHS.

18 3. THE COMMISSION MAY CONTRACT WITH ANOTHER
19 ENTITY THAT SUBMITS A COMPETITIVE BID TO CREATE, OPERATE, AND UPDATE THE
20 DATABASE.

21 (HII) FOR THE PURPOSES OF SUBSECTION (E) OF THIS SECTION, THE
22 COMMISSION SHALL MAKE EACH UPDATE TO THE DATABASE AVAILABLE TO
23 PERSONS ENGAGED IN TELEPHONE SOLICITATION AT A REASONABLE TIME PRIOR TO
24 THE EFFECTIVE DATE OF THE UPDATE.

25 (IV) THE COMMISSION SHALL CREATE AND HAVE THE DATABASE IN
26 OPERATION WITHIN 6 MONTHS AFTER MAKING A FINDING UNDER PARAGRAPH (1)(II)
27 OF THIS SUBSECTION.

28 (C) IF THE COMMISSION FINDS THAT THE FEDERAL "DO NOT CALL" REGISTRY
29 IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION, THE COMMISSION
30 SHALL ADOPT REGULATIONS TO:

31 (1) SPECIFY THE METHODS BY WHICH RESIDENTIAL SUBSCRIBERS ARE
32 TO BE INFORMED OF THE OPPORTUNITY TO FILE A NOTICE WITH THE COMMISSION
33 REQUESTING THAT THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER BE
34 ADDED TO THE DATABASE, INCLUDING:

35 (I) REQUIRING EACH LOCAL EXCHANGE COMPANY AND WIRELESS
36 TELEPHONE SERVICE PROVIDER TO INFORM ITS RESIDENTIAL SUBSCRIBERS; AND

37 (II) USING PUBLIC SERVICE ANNOUNCEMENTS, MAILINGS, OR
38 OTHER MEANS;

1 (2) ~~SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER IS~~
2 ~~TO BE INFORMED ABOUT THE TYPES OF CALLS THAT ARE EXEMPT FROM THIS~~
3 ~~SECTION;~~

4 (3) ~~SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER~~
5 ~~WHO FILES A NOTICE IS INFORMED ABOUT THE EFFECTIVE DATE OF THE DATABASE~~
6 ~~AND EACH UPDATE TO THE DATABASE THAT WILL CONTAIN THE RESIDENTIAL~~
7 ~~SUBSCRIBER'S TELEPHONE NUMBER;~~

8 (4) ~~SPECIFY THE METHODS BY WHICH A RESIDENTIAL SUBSCRIBER~~
9 ~~MAY:~~

10 (4) ~~FILE AN INITIAL NOTICE WITH THE COMMISSION THAT ADDS~~
11 ~~THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER TO THE DATABASE; AND~~

12 (II) ~~FILE A CANCELLATION NOTICE WITH THE COMMISSION THAT~~
13 ~~DELETES THE RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER FROM THE~~
14 ~~DATABASE;~~

15 (5) ~~WHERE A RESIDENTIAL SUBSCRIBER'S TELEPHONE NUMBER~~
16 ~~CHANGES, SPECIFY THE EFFECT THE CHANGE WILL HAVE ON THE RESIDENTIAL~~
17 ~~SUBSCRIBER'S LISTING ON THE DATABASE;~~

18 (6) ~~SPECIFY THE METHODS BY WHICH A PERSON INTENDING TO MAKE A~~
19 ~~TELEPHONE SOLICITATION CAN OBTAIN ACCESS TO THE LATEST UPDATED VERSION~~
20 ~~OF THE DATABASE;~~

21 (7) ~~SPECIFY THE FEES THAT A PERSON MUST PAY TO THE COMMISSION~~
22 ~~TO OBTAIN A COPY OF THE LATEST UPDATED VERSION OF THE DATABASE; AND~~

23 (8) ~~SPECIFY OTHER MATTERS RELATING TO THE DATABASE THAT THE~~
24 ~~COMMISSION CONSIDERS DESIRABLE OR, AFTER CONSULTATION WITH THE~~
25 ~~ATTORNEY GENERAL, THAT THE ATTORNEY GENERAL CONSIDERS DESIRABLE FOR~~
26 ~~ENFORCEMENT.~~

27 (D) (1) ~~THIS SUBSECTION APPLIES ONLY IF THE COMMISSION FINDS THAT~~
28 ~~THE FEDERAL "DO NOT CALL" REGISTRY IS NOT IN EFFECT UNDER SUBSECTION~~
29 ~~(B)(1)(II) OF THIS SECTION.~~

30 (2) ~~THE COMMISSION SHALL ESTABLISH FEES UNDER THIS SECTION~~
31 ~~SUFFICIENT TO COVER THE COSTS OF IMPLEMENTING, MAINTAINING, AND~~
32 ~~ADMINISTERING THE DATABASE.~~

33 (3) ~~THE COMMISSION MAY NOT CHARGE A FEE TO A RESIDENTIAL~~
34 ~~SUBSCRIBER FOR LISTING THE SUBSCRIBER IN THE DATABASE OR FOR RENEWING~~
35 ~~THE SUBSCRIBER'S LISTING.~~

36 (E) (1) ~~A PERSON WHO INTENDS TO MAKE A TELEPHONE SOLICITATION TO~~
37 ~~A RESIDENTIAL SUBSCRIBER IN THE STATE SHALL:~~

1 (I) IF THE FEDERAL "DO NOT CALL" REGISTRY IS IN EFFECT,
2 COMPLY WITH FEDERAL LAW AND REGULATIONS CONCERNING TELEMARKETING
3 SALES AND THE REGISTRY; OR

4 (H) IF THE COMMISSION FINDS THAT THE FEDERAL "DO NOT CALL"
5 REGISTRY IS NOT IN EFFECT UNDER SUBSECTION (B)(1)(II) OF THIS SECTION:

6 1. PURCHASE THE LATEST UPDATED VERSION OF THE
7 DATABASE FROM THE COMMISSION; AND

8 2. IF THE PERSON INTENDS TO MAKE TELEPHONE
9 SOLICITATIONS ON BEHALF OF MORE THAN ONE CLIENT, PURCHASE A SEPARATE
10 COPY OF THE DATABASE FOR EACH CLIENT.

11 (F) (1) A PERSON MAY NOT VIOLATE THE TELEPHONE CONSUMER
12 PROTECTION ACT, 47 U.S.C. § 227, AS IMPLEMENTED BY THE FEDERAL TRADE
13 COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART 310) AND THE
14 FEDERAL COMMUNICATIONS COMMISSION IN THE RESTRICTIONS ON
15 TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (64 C.F.R. SUBPART L).

16 (2) A PERSON MAY NOT MAKE OR CAUSE TO BE MADE ANY TELEPHONE
17 SOLICITATION TO A TELEPHONE NUMBER THAT IS LISTED ON THE LATEST UPDATED
18 VERSION OF THE DATABASE.

19 (3) A PERSON MAY USE INFORMATION CONTAINED IN THE DATABASE
20 AND INFORMATION USED TO CREATE AND OPERATE THE DATABASE ONLY:

21 (I) TO COMPLY WITH THIS SECTION; OR

22 (II) IN A PROCEEDING OR ACTION TO ENFORCE THIS SECTION.

23 (G) EACH SOLICITATION AND EACH PROHIBITED PRACTICE IN VIOLATION OF
24 THIS SECTION IS A SEPARATE VIOLATION.

25 (H) IN CONDUCTING TELEPHONE SOLICITATIONS, THE USE OF AN
26 AUTOMATED DIALING, PUSH BUTTON, OR TONE ACTIVATED DEVICE THAT
27 OPERATES SEQUENTIALLY OR IN A MANNER SO THAT THE USER IS OTHERWISE
28 UNABLE TO AVOID CONTACTING TELEPHONE NUMBERS IN THE RESIDENTIAL
29 SUBSCRIBER DATABASE IS PRIMA FACIE EVIDENCE OF AN INTENTION TO VIOLATE
30 THIS SECTION.

31 (I) A PERSON RECEIVING A TELEPHONE SOLICITATION IN VIOLATION OF
32 SUBSECTION (F) OF THIS SECTION MAY BRING AN ACTION IN A COURT OF
33 COMPETENT JURISDICTION AGAINST THE PERSON MAKING THE TELEPHONE
34 SOLICITATION OR THE PERSON ON WHOSE BEHALF THE SOLICITATION WAS MADE
35 TO RECOVER:

36 (1) THE GREATER OF:

37 (I) LIQUIDATED DAMAGES OF \$11,000; OR

1 (HI) ~~ACTUAL DAMAGES; AND~~

2 (2) ~~REASONABLE ATTORNEY'S FEES.~~

3 (J) ~~A PERSON MAY NOT BRING AN ACTION UNDER SUBSECTION (F) OF THIS~~
4 ~~SECTION AFTER THE LATER OF:~~

5 (1) ~~2 YEARS AFTER THE PERSON KNEW OR SHOULD HAVE KNOWN OF~~
6 ~~THE ALLEGED VIOLATION OF SUBSECTION (F) OF THIS SECTION; OR~~

7 (2) ~~2 YEARS AFTER THE TERMINATION OF ANY PROCEEDING OR ACTION~~
8 ~~BY THE STATE AGAINST A PERSON CONDUCTING THE TELEPHONE SOLICITATION~~
9 ~~FOR AN ALLEGED VIOLATION OF SUBSECTION (F) OF THIS SECTION.~~

10 (K) ~~A DEFENDANT MAY ASSERT AN AFFIRMATIVE DEFENSE IN ANY ACTION OR~~
11 ~~PROCEEDING BROUGHT UNDER SUBSECTION (I) OF THIS SECTION OR § 14-2206 OF~~
12 ~~THIS SUBTITLE THAT THE DEFENDANT HAS ESTABLISHED AND IMPLEMENTED~~
13 ~~REASONABLE PRACTICES AND PROCEDURES EFFECTIVELY TO PREVENT TELEPHONE~~
14 ~~SOLICITATIONS IN VIOLATION OF THIS SECTION IF THE DEFENDANT:~~

15 (1) ~~HAS ESTABLISHED AND IMPLEMENTED THOSE PRACTICES AND~~
16 ~~PROCEDURES WITH DUE CARE;~~

17 (2) ~~HAS TRAINED ITS PERSONNEL, AND EACH PERSON ASSISTING IN~~
18 ~~COMPLIANCE, IN THOSE PRACTICES AND PROCEDURES AND HAS TAKEN~~
19 ~~REASONABLE STEPS TO ENSURE THAT THE PRACTICES AND PROCEDURES ARE~~
20 ~~FOLLOWED; AND~~

21 (3) ~~MAINTAINS RECORDS DOCUMENTING THE IMPLEMENTATION AND~~
22 ~~TRAINING UNDER ITEMS (1) AND (2) OF THIS SUBSECTION.~~

23 ~~[14-2205.] 14-2206.~~

24 ~~In addition to any remedies otherwise available at law, a violation of this~~
25 ~~subtitle shall be:~~

26 (1) ~~An unfair and deceptive trade practice under Title 13, Subtitle 3 of~~
27 ~~this article; and~~

28 (2) ~~If the violation involves a solicitation offering credit services, a~~
29 ~~violation of the Maryland Credit Services Businesses Act UNDER TITLE 14, SUBTITLE~~
30 ~~19 OF THIS ARTICLE.~~

31 (C) ~~"CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS ARTICLE.~~

32 (D) ~~"CONSUMER CREDIT", "CONSUMER GOODS", "CONSUMER REALTY", AND~~
33 ~~"CONSUMER SERVICES" HAVE THE MEANINGS STATED IN § 13-101 OF THIS ARTICLE.~~

34 (E) ~~"DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF THE~~
35 ~~OFFICE OF THE ATTORNEY GENERAL.~~

1 (F) "PROFESSIONAL SOLICITOR" HAS THE MEANING STATED IN § 6-101 OF THE
2 BUSINESS REGULATION ARTICLE.

3 (G) "TELEPHONE SOLICITATION" MEANS A TELEPHONE CALL INITIATED FOR
4 THE PURPOSE OF ENCOURAGING THE SALE, LEASE, RENTAL, LOAN, OR BAILMENT OF
5 CONSUMER CREDIT, CONSUMER GOODS, CONSUMER REALTY, OR CONSUMER
6 SERVICES.

7 14-3202.

8 A PERSON MAY NOT VIOLATE:

9 (1) THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE
10 PREVENTION ACT, 15 U.S.C. §§ 6101 THROUGH 6108, AS IMPLEMENTED BY THE
11 FEDERAL TRADE COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART
12 310); OR

13 (2) THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, AS
14 IMPLEMENTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE
15 RESTRICTIONS ON TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (64 C.F.R.
16 SUBPART L).

17 14-3203.

18 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE
19 PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE AND IS SUBJECT TO
20 THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS
21 ARTICLE.

22 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,
23 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING
24 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

25 (1) REASONABLE ATTORNEY'S FEES; AND

26 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

27 (I) \$500 FOR EACH VIOLATION; OR

28 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE
29 VIOLATION.

30 (C) FOR PURPOSES OF THIS SECTION, EACH PROHIBITED TELEPHONE
31 SOLICITATION AND EACH PROHIBITED PRACTICE DURING A TELEPHONE
32 SOLICITATION IS A SEPARATE VIOLATION.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the
34 Attorney General shall report to the Senate Finance Committee and the House
35 Economic Matters Committee on or before July 1, 2005, on the status of enforcement
36 of the provisions of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect ~~July~~ June 1, 2004.